

RESPONSIVENESS SUMMARY

Proposed Hazardous Waste Management Facility Operating License

**Environmental Disposal Systems, Inc.
Citrin Drive Facility, Romulus; MIR 000 016 055**

December 27, 2005

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INTRODUCTION

On May 20, 2005, the Michigan Department of Environmental Quality (MDEQ) proposed to consider whether or not to issue a hazardous waste management facility operating license (license) to Environmental Disposal Systems, Inc. (EDS). The license would allow EDS to operate its newly-constructed aboveground hazardous waste treatment and storage facility at 28470 Citrin Drive in Romulus, Michigan. The license is required under Part 111, Hazardous Waste Management, of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451), and its administrative rules, Michigan Administrative Code R 299.9101 *et seq.*

The MDEQ made the draft license and associated fact sheet and the entire administrative record available for public review and offered interested persons an opportunity to comment on the proposed decision during a public comment period from May 30, 2005, through July 15, 2005. The MDEQ also conducted a public hearing regarding the draft license on June 30, 2005.

This Responsiveness Summary contains the MDEQ's response to all relevant comments received at the public hearing and during the public comment period. The comments have been summarized and similar comments have been grouped together. The comments are presented in *italics* in alphabetical order by topic, and the MDEQ's responses are presented in regular type following each comment.

Additionally, the facility-specific conditions in the license are listed at the end of this Responsiveness Summary. There have been no significant changes made to the public-noticed draft license, dated May 24, 2005, as a result of the public hearing and formal public comment period. One minor revision made was to correct the name of Attachment 11, Environmental Monitoring Sampling and Analysis Plan, in the body of the license for consistency purposes.

I. APPLICANT QUALIFICATIONS

1. *The MDEQ should deny the license based on EDS's history relative to submitting a complete and technically adequate license application and the qualifications of company personnel.*

EDS submitted its initial license application in a timely manner relative to the completion of construction of the aboveground portion of the facility. The initial license application was subsequently withdrawn by EDS in an effort to correct a deficiency in an outdoor secondary containment system for rail tanker cars. The deficiency was corrected, and the construction and capability of the entire aboveground portion of the facility subject to the license requirements were recertified by an independent, licensed professional engineer. EDS resubmitted the license application, and it was determined that the application was administratively complete and technically adequate.

Based on the disclosure statement and solicitation of information by the MDEQ, none of the persons who are subject to the disclosure statement requirements under Part 111 have been found guilty of any serious environmental crimes by any state, federal, Canadian, or provincial agency. The individuals employed or contracted by EDS must meet the minimum qualifications and participate in the ongoing training program for facility personnel, which are explained in detail in Section 2.110 of the application. The minimum qualifications and ongoing training program satisfy the personnel training requirements under R 299.9605 and Title 40 of the Code of Federal Regulations (CFR), Section 264.16. EDS will be required under Condition II.G of the license to document compliance with this requirement in the facility operating record that will be available for inspection throughout the life of the facility. EDS is not required under Part 111 to provide its individual employees' credentials in the application.

The MDEQ has no basis to deny the license relative to the adequacy of the license application and the qualifications of company personnel as demonstrated by the disclosure statement or the training requirements.

2. *EDS used a document titled "EPA = Permitted Deep Well Disposal Facility, Investment Opportunity", a document full of misinformation, as a means to secure investors for the project.*

While the underground injection wells are not the direct subject of the license, the MDEQ has elected to respond to this comment since it was relevant to EDS's qualifications. The MDEQ has reviewed the subject document, which is not dated. It is not feasible to evaluate the accuracy of the information regarding disposal costs or facility capacity as this information may have been accurate at the time the document was generated even if it may not reflect the

current market. As with any investment opportunity, investors should research relevant information and make their investment decisions accordingly. The MDEQ's decision regarding the license for the aboveground treatment and storage facility must be based on whether the facility complied with the regulatory requirements, not on information EDS used to secure investors.

3. *How can the MDEQ issue a license to EDS when it did not build the facility in accordance with the construction permit initially?*

On September 9, 2002, EDS submitted its initial license application for MDEQ review. The MDEQ notified EDS of the technical deficiencies in the operating license application in January 2003. A revised operating license application was submitted by EDS on February 21, 2003. The U.S. Environmental Protection Agency (U.S. EPA) granted EDS a land disposal restrictions (LDR) variance, which was necessary for the facility to operate, on March 20, 2004. The MDEQ conducted a review of the revised operating license application, taking into account the federal LDR variance. On September 9, 2004, the MDEQ conducted a public hearing and provided an opportunity for public comments. As a result of the public participation process and a site visit conducted by MDEQ staff on November 8, 2004, the MDEQ determined that the rail siding for rail tanker cars was not provided with the required secondary containment. On December 9, 2004, EDS notified the MDEQ that it was withdrawing its initial application in order to correct construction deficiencies related to the rail siding. EDS proceeded to correct these deficiencies and resubmit the license application for the aboveground portion of the facility. The new operating license application, submitted on February 28, 2005, is the same as the initial application except that it documents the reconstruction of the rail siding according to the approved plans and specifications and includes a report from a new independent, licensed professional engineer recertifying the construction of the entire aboveground portion of the facility and all as-built drawings required for the application. Follow-up inspections conducted by the MDEQ confirmed the rail siding had been reconstructed in accordance with the construction permit drawings and specifications.

4. *The MDEQ should maintain and make public financial disclosure with respect to the terms of the Detroit Police and Fire Departments Pension Fund investment.*

The MDEQ has determined that the license application meets the required financial requirements and does not have the authority to require public disclosure of financial information beyond the requirements. EDS is required by law to disclose who its major investors are only through the application for the initial operating license.

5. *EDS fails to provide for adequate financial assurance for corrective action and other risks. If an accident or act of God results in a need for corrective action*

so significant and leads to bankruptcy or facility closure, the insurance and closure financial assurance will be inadequate.

EDS has complied with the Part 111 financial capability requirements for pollution liability coverage for sudden and accidental occurrences in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000, exclusive of legal defense costs, and for financial assurance for closure of the aboveground treatment and storage portion of the facility (i.e., no longer conducting the hazardous waste treatment or storage operations) based on the costs of a third party completing the closure. Under Part 111, EDS is not required to provide financial assurance for corrective action (i.e., an action determined by the MDEQ to be necessary to protect public health, safety, or welfare or the environment, that includes, but is not limited to, investigation, evaluation, cleanup, removal, remediation, monitoring, containment, isolation, treatment, storage, management, temporary relocation of people, and provision of alternative water supplies, or any corrective action allowed under Title II of the Solid Waste Disposal Act or its regulations) prior to operation of the treatment and storage facility.

II. CAPACITY NEEDS

1. *The facility is not needed or wanted by local citizens. Why is the MDEQ not listening to the local citizens?*

The MDEQ has consistently maintained, and Michigan courts, including the Michigan Court of Appeals, have agreed, that the MDEQ does not have the authority to consider whether the facility is needed or wanted when deciding whether to issue or deny a license. Section 11110 of Part 111 does not establish "need criteria" for licensing. The MDEQ is required under Section 11110 to assess the overall capacity needs in the state for the purpose of identifying capacity shortfalls and the means to eliminate them (see Subsection 11110[4]), not to keep new facilities from being developed. Neither Part 111 nor the updated Hazardous Waste Management Plan contain provisions for the MDEQ to deny a license for a facility that is not "needed" in order to address some current state or regional market demand. By allowing market forces to work, the MDEQ is simply following one of the fundamental policies reiterated in the 1991 Update to Michigan's Hazardous Waste Management Plan: "Michigan should rely upon private enterprise, rather than state government, to develop necessary hazardous waste management facilities...." Private enterprise assesses the market (locations of generators, competition, economic trends, available technology, etc.) and takes the initiative to develop new facilities.

Part 111 does not include citizen opposition, in and of itself, as one of the criteria under which the MDEQ is authorized to deny a license. The decision must be based on a determination of a given facility's compliance with the

applicable laws and regulations and its impact on human health and the environment. The MDEQ has taken into account comments provided by local citizens in developing the license to the extent afforded by law.

- 2. Licensing this facility encourages imports from other states and Canada and the facility will become a dumping ground for out-of-state wastes.*

The MDEQ does not have the authority to control imports from other states or Canada.

- 3. Since the economic viability of the facility is questionable, EDS will not have the resources to properly maintain, operate, and close the facility when the time comes. The MDEQ should require EDS to provide an updated business plan that demonstrates the need for the facility and some reasonable expectation that the facility is economically viable.*

EDS has complied with the financial capability requirements for financial assurance for closure and pollution liability coverage. Thus, funds have been made available to complete closure of the facility. Issues regarding need are addressed above. EDS is not required by law to provide any additional information regarding economic viability.

III. COMMUNITY MITIGATION AGREEMENT

- 1. The Community Mitigation Agreement should be updated, made stronger and more protective, and include compensation to businesses and mineral rights owners.*

The Community Mitigation Agreement (Agreement) is a document that was developed and entered into between EDS and the Environmental Concerns Association (ECA) as a means to address certain issues raised by the public as part of the construction permitting process for the aboveground hazardous waste treatment and storage portion of the facility. The MDEQ has no authority under Part 111 to unilaterally impose a different agreement. However, the parties to the Agreement are free to pursue modification of the Agreement in accordance with Paragraph 27 of the Agreement. Condition II.V of the license requires EDS to comply with the Agreement and to provide the MDEQ with any proposed amendments to the Agreement for approval. The purpose of requiring MDEQ approval of a proposed amendment to the Agreement as a minor license modification is simply to ensure that any proposed modifications do not violate the license requirements.

- 2. By incorporating the Agreement into the license, the MDEQ is excusing EDS from compliance and response activities as Paragraph 28 allows EDS to terminate its obligations once the facility has closed, without reference to compliance with all closure obligations and approvals. The MDEQ must*

modify the license to clarify that the Agreement does not limit EDS's obligations under law and renote the license.

The MDEQ is incorporating the Agreement into the license to enforce the mitigation reached between EDS and the public as part of the construction permitting process. The incorporation of the Agreement into the license is addressed in Paragraph 2 of the Agreement. The MDEQ does not view the Agreement as governing anything other than the mitigation items outlined in the Agreement. The MDEQ believes that the Agreement is clear on this issue. Paragraph 27 of the Agreement specifically states that the Agreement shall not exempt EDS from compliance with all applicable laws and is to be governed by and construed in accordance with state law. Paragraph 28 of the Agreement addresses the mitigating measures outlined in the Agreement itself and not any other compliance or response activities, obligations, or liabilities outside of the Agreement, including the closure obligations and approvals under Part 111. Paragraph 28 of the Agreement does not terminate any obligations that EDS may have outside of the Agreement, nor does it limit a party's ability to pursue separate litigation for items outside of the Agreement. The MDEQ does not support using the license to provide further clarification on the Agreement when it is not a party to the Agreement.

IV. COMPLIANCE AND ENFORCEMENT

1. *The MDEQ is underfunded and understaffed, which raises concerns regarding the agency's ability to inspect and monitor the facility.*

Michigan's Hazardous Waste Management Program (HWMP) has two primary sources of funding: a federal grant, which represents the major source of funding, and revenue generated from hazardous waste user charges that were legislated in November 2001. Program resources will be sufficient for adequate compliance and monitoring oversight in accordance with Part 111 and its administrative rules.

2. *The environmental monitoring plan is inadequate and ineffective in that Condition V.A.9 of the license allows EDS to engage in a lengthy review and negotiation period with the MDEQ that may go on for months after a problem as been found to occur and needlessly delay corrective action.*

The initially identified statistically significant increase has to be reported to the MDEQ within one working day of when it was determined as required by Condition V.7 and Condition V.8 of the license. These conditions lay out specific and extensive requirements that EDS must comply with in responding to a possible release.

In some cases, a statistically significant increase initially identified in a groundwater sample for any given chemical is found to be due to a laboratory

problem, an error in calculations, a sample bottle being contaminated before sampling, etc. Condition V.A.9 of the license provides EDS with the opportunity to show that the problem was a “false positive,” a situation where there was no release to the environment although the sampling seemed to have identified a concern. The time frames in the license condition are included to account for the time it takes to obtain more samples, have additional laboratory analyses, check statistical calculations, and write the report. The MDEQ still has the ability under Condition V.10 of the license to require any actions deemed necessary to protect human health and the environment without having to delay.

This is a standard requirement and is no different, or less stringent, than requirements imposed at any other hazardous waste treatment, storage, or disposal facility.

3. *There are thousands of abandoned monitoring and test wells in Michigan. Does the MDEQ know where all of those abandoned monitoring wells and test wells are in the immediate vicinity of the EDS facility?*

EDS was required under R 299.9506(1)(f) to identify on the topographic map any wells or soil borings for which copies of logs are available. Not all monitoring and test wells are recorded, but those for which records were available were provided in the license application. Of concern with respect to the license for the aboveground hazardous waste treatment and storage facility are borings that may allow surface spills to reach an aquifer. Therefore, the important borings nearby would be any drilled through the clay present in the entire area to the top of the bedrock, which could provide a pathway from the surface down to the bedrock where the first aquifer is encountered. No such borings that penetrate the clay were found on the EDS property.

Other crucial wells would be those that may have been drilled to look for oil down into the injection zone, which if not plugged correctly, may allow injected waste to come to the surface. As part of the federal Underground Injection Control (UIC) Program permit application process and the Part 625, Mineral Wells, of Act 451, permit application process, EDS was required to search all available records regarding wells. Based on information available to the MDEQ, Office of Geological Survey (OGS), no wells for oil and gas or mineral wells other than the EDS wells have been drilled into the injection zone within the cities of Romulus or Taylor nor the townships of Nankin or Dearborn. This area is larger than the required area of review in Part 625.

4. *No regulator or any of its agents have inspected the below ground portions of the facility and its storm water system and other piping carrying hazardous wastes. EDS should be required to pay a state contractor to conduct a comprehensive review of the facility, including reviewing the below ground portions of the facility.*

The MDEQ has conducted a review of the hazardous waste treatment and storage facility both in the field and via the engineering drawings and specifications and the certification of construction provided in the license application. This includes portions of the treatment and storage operations and storm water systems that are slightly below grade. Additionally, an independent, licensed professional engineer has conducted a third-party engineering review of the treatment and storage portions of the facility from both a field and engineering specification perspective. Portions of the construction of the aboveground treatment and storage facility were also inspected by the city of Romulus. EDS also hired a third-party inspector to verify compliance with the applicable building codes. The MDEQ does not have independent state contractors who conduct engineering reviews. Regardless, EDS has complied with the facility review requirements specified in Part 111. Any reviews of the deep wells and the associated appurtenances were conducted under separate federal and state programs governing their regulation, not under Part 111.

V. CONSTRUCTION PERMIT AND SITE REVIEW BOARD

1. *In issuing the construction permit despite the Site Review Board's recommendation to deny the permit, the MDEQ summarily dismissed many legitimate concerns and challenges raised and made the whole process a political farce.*

The MDEQ evaluated each of the Site Review Board's (SRB) reasons for recommending denial of the construction permit and provided a detailed evaluation of them in the fact sheet associated with the construction permit. That evaluation included consideration of the public testimony submitted during the SRB process. As explained in this document and the referenced fact sheet, the SRB's recommendations and the public's comments were the basis for the MDEQ to add special conditions to the construction permit (i.e., looped water supply, emergency access, community mitigation, traffic limitations, etc.). The issuance of the construction permit was upheld in Michigan courts.

2. *The MDEQ's issuance of the construction permit despite the SRB's recommendation to deny it is tainted by the MDEQ's bias and lack of objectivity, as displayed by the MDEQ during the SRB process and substantiated by the Auditor General Report.*

The administrative record developed during the SRB process simply does not support the allegation that the MDEQ lacked objectivity. Consistent with the provisions of Part 111, the SRB decided its own timeline, the issues that it would consider, the agenda for each meeting, and who would be called to provide testimony. The written and oral testimony provided to the SRB by the

MDEQ was done at the request of the SRB, and the MDEQ's summary sheets were provided only to help the SRB keep track of the issues and testimony, not as a replacement for the meeting minutes and evidence presented during the process. The SRB did not complain about, or object to, any of the written summaries provided by the MDEQ. Also, as explained in later responses regarding the SRB process, the MDEQ did everything it could to keep the SRB on track. At one point in the SRB process, the MDEQ even had to persuade the SRB not to cut off testimony from the public and EDS, and instead to hear all of the testimony that the SRB had determined was important and to deliberate on the issues before voting on a recommendation.

The MDEQ has reviewed the recent Auditor General Report and does not find that it substantiates any inappropriate, unethical, or potentially illegal activity by the MDEQ with respect to the issuance of the various EDS permits at the state level. The MDEQ has maintained a thorough, publicly available administrative record with respect to the EDS construction permitting and licensing processes.

3. *The MDEQ should reconsider all of the EDS permitting decisions that it has made to properly address the issues and ensure that the permitting process was legitimate.*

Under Subsection 11120(16) of Part 111, the MDEQ may reconvene the SRB to consider new issues raised during the public comment period that began on December 15, 2000, and ended on February 1, 2001. That public comment period did not generate any new issues, and it would be inappropriate for the MDEQ to reconvene the SRB to reconsider issues that were already raised during its process. The MDEQ's issuance of the construction permit was affirmed by Michigan courts, and the MDEQ is not aware of any new information that would be cause to reconsider the permit at this time.

4. *The SRB's recommendation should be followed unless there is a real absence of evidence in the record that would support its recommendation.*

As explained in the fact sheet for the construction permit and in numerous responses in this document, many of the SRB's reasons were simply not supported by any evidence in the record. The record does support some of the issues raised in the SRB's reasons for denial, and the MDEQ is relying on that record as a basis to put special conditions in the license that require EDS to address them (e.g., provide alternate emergency access/egress road).

VI. ENVIRONMENTAL ASSESSMENT

1. *Has EDS ever received a Federal Aviation Administration permit for the facility, and if so, what is the date of issuance? If they have not received an updated permit after September 11, 2001, the MDEQ should deny the operating license.*

EDS is not required to obtain a permit from the Federal Aviation Administration (FAA). EDS did obtain an Acknowledgement of Notice of Proposed Construction or Alteration from the FAA on January 5, 1996. This FAA acknowledgement is contained in Section 1.70 of both the construction permit application and the operating license application.

2. *The MDEQ should reconsider the suitability of the facility in the wake of the terrorist events of September 11, 2001, as new information and standards indicate that the facility is a potential terrorist target and, therefore, a potential threat to human health and the environment.*

The MDEQ reviewed the license application and prepared the license relative to the legislated and promulgated requirements for hazardous waste treatment and storage facilities currently in effect. The MDEQ has not identified any new standards relative to the operation of a hazardous waste treatment and storage facility that have been legislated or promulgated as a direct result of the terrorist events of September 11, 2001. It warrants mentioning that hazardous waste facilities are already subject to security requirements that other industries are not.

3. *The Failure Mode Assessment component of the Environmental Assessment is inadequate and must be revised and resubmitted to the MDEQ.*

The MDEQ has determined that the Environmental Assessment, including Failure Mode Assessment, meets the requirements of Part 111 and its rules. It satisfactorily examines potential failures from inaccurate generator waste profiles, to vehicular releases, to tank failures, etc., and how these failures are already/would be addressed by in-place preventative and safety features such as backup systems, alarms, security measures to personnel responses, etc.

VII. ENVIRONMENTAL IMPACT

1. *The MDEQ must conduct an analysis of all EDS's permits pursuant to Part 17, Michigan Environmental Protection Act (MEPA), of Act 451, to review their environmental implications and determine with certainty that the permits do not result in any pollution, impairment, or destruction of resources. Section 1705 of the MEPA requires agencies to determine impairment relative to the air, water, or other natural resources or the public trust in these resources.*

Only the licensing of the aboveground hazardous waste treatment and storage portion of the facility is under consideration as part of this process. The treatment and storage of hazardous waste in the aboveground tanks and containers would not pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources. Licensing a facility that complies with Part 111 is consistent with Part 17. By complying with Part 111, the treatment and storage operations will not result in pollution, impairment, or destruction of the air, water, or other natural resources or the public trust in these resources.

2. *The additional trucks carrying waste to the facility put Michigan's environment at greater risk.*

Hazardous waste is already transported safely across Michigan's roads and railways. The EDS facility will probably take some of the waste that is already generated and transported throughout Michigan. The volume of trucks may increase due to additional hazardous waste shipments from outside of Michigan, although the number of additional trucks carrying waste to the facility is indeterminable. It should be noted that traffic impacts were addressed during the construction permit process and are not relevant to this operating license decision.

VIII. ENVIRONMENTAL JUSTICE

1. *The MDEQ is violating the community's sense of environmental justice in allowing this facility to be constructed and operated by providing both financial and material support to EDS, failing to provide opportunities for meaningful public involvement, losing certain documents, providing unfair treatment to the residents of Romulus and Taylor, and harassing local residents.*

Title VI of the Civil Rights Act places the federal government in the role of gauging whether the actions of states or other federal funding recipients discriminate against a protected class. Therefore, looking to the federal government for guidance on this issue, the MDEQ did not perform an environmental justice analysis at this site because a review by the U.S. EPA indicated that it did not qualify as an environmental justice case. Based on the U.S. EPA draft guidance, the demographics of the area do not suggest that the U.S. EPA's conclusion was inaccurate.

The allegation that the MDEQ has provided financial or material support to EDS for the Romulus facility is a serious one that was not substantiated. The MDEQ has not provided either financial or material support to EDS.

The MDEQ has complied with Part 111 in terms of public participation for the license application. The MDEQ has provided many opportunities for public involvement by actively soliciting input on the license application via a Notice

of Receipt, which was published in local newspapers and the DEQ Calendar and mailed to persons on the facility-specific mailing list, by conducting public hearings on the draft license and holding open public comment periods for written comments, notices for which were published in local newspapers and the DEQ Calendar, broadcast on a local radio station, and mailed to persons on the facility-specific mailing list. The application, relevant public notices, fact sheet, and draft operating license have also been made available to the public at both the central and district MDEQ offices and at the Romulus Public Library. The Romulus Public Library was selected as a local repository for information based on its location, hours of operation, ease of access, and ability to provide an environment in which the documents could be easily reviewed. Draft documents have also been made available via the MDEQ Web site. Additionally, MDEQ staff persons have made themselves readily available for inquiries regarding the facility for all persons and will continue to do so.

The administrative record for the EDS aboveground hazardous waste treatment and storage facility is maintained by the MDEQ, a matter of public record, and available for review. With regard to the allegation that the MDEQ has lost certain, unspecified documents, we are not aware that any relevant documents have been misplaced.

As the state agency charged with the protection of human health and the environment, the MDEQ strives to apply the laws that it is responsible for implementing in a consistent and unbiased manner. The MDEQ is not aware of any circumstances where the citizens of Romulus or Taylor or any of the other surrounding communities have been treated in an unfair manner or harassed.

IX. HUMAN HEALTH AND SAFETY

1. *The MDEQ has a mandate to protect human health and safety. The area is already bearing more than its fair share of this type of activity. Romulus is an at-risk, already overburdened community. The facility will not be protective of human health and safety.*

As previously explained in the fact sheet and other responses associated with the construction permit and the fact sheet for the draft license for the aboveground hazardous waste treatment and storage operations, the testimony received during the SRB process did not demonstrate that the construction and operation of the storage and treatment facility would adversely impact public health, safety, and welfare or the environment. The construction permit did not authorize the release of contaminants to the air, soil, groundwater, or surface water. The facility is designed to prevent releases and exposures. Therefore, the operation of the storage and

treatment facility does not add to existing environmental burdens (e.g., sites of environmental contamination) borne by the community.

X. INJECTION WELLS

The MDEQ received numerous comments regarding the two injection wells that would be used for the disposal of hazardous wastes received at the EDS facility. Those comments are not relevant to the decision to issue or deny this hazardous waste management facility operating license for the aboveground hazardous waste treatment and storage portion of the facility. This license pertains to the aboveground treatment and storage operations that would occur in tanks and containers prior to injection into the deep wells and not to the operation of the two injection wells themselves. The construction and operation of the injection wells are permitted separately under the federal UIC Program and Part 625. Rule 299.9503(3) provides for a "permit by rule" for hazardous waste injection wells under certain conditions. If the requirements of R 299.9503(3)(a) are satisfied, the owner and operator of a hazardous waste injection well "shall be deemed to have an operating license and shall not be subject to the construction permit requirements of part 111 of the act and these rules." EDS meets all of the applicable requirements of R 299.9503(3)(a). EDS obtained, and has complied with, the UIC permits issued by the U.S. EPA under the federal Safe Drinking Water Act, thereby satisfying the requirements of R 299.9503(3)(a)(i) and (ii). The only other potentially relevant requirement in R 299.9503(3)(a) is that the owner and operator "complies with ...[t]he provisions of R 299.9629, Corrective action." Under the corrective action rule, the obligation to perform corrective action arises if there are any "releases of a contaminant from any waste management units at the facility." To date, EDS has not accepted or managed any waste at the Citrin Drive facility. The MDEQ inspections have not identified, nor has MDEQ staff otherwise obtained, evidence of any releases of a contaminant from any waste management unit at the site. Thus, EDS has no current corrective action obligation to perform. It is important to note, however, that as stated in the Part 111 construction permit for EDS's aboveground facility and in the draft Part 111 operating license for that facility publicly noticed by the MDEQ, when and if a Part 111 operating license for the facility is issued, it will contain specific provisions, consistent with both the RCRA and Part 111, requiring EDS to implement corrective action for any releases of a contaminant from all waste management units at the facility.

Much of the public concern appears to be based on problems (e.g., groundwater contamination) that were encountered at other facilities that have had injection wells. The MDEQ offers the following information about two such facilities; the Gibraltar Chemical Resources facility in Winona, Texas (Winona), and the Chemical Waste Management facility in Vickery, Ohio (Vickery), to clarify what the problems were and to distinguish those operations from the EDS facility.

The Winona facility began operations in 1981, before the federal hazardous waste management regulations were promulgated, and the Winona facility would not meet Michigan's hazardous waste management design standards today. In addition, the Winona facility conducted operations (e.g., fuel blending) different than those proposed for the EDS facility. There is no evidence that contamination of the groundwater occurring at the Winona facility was a result of injected waste migrating from the subsurface. The groundwater contamination was due to improper surface operations; not injection wells. Other problems at the facility (e.g., air emissions, spills, etc.) were due to poor design and management practices. The Winona facility is now inactive and is a federal Superfund cleanup site. Permits for the two disposal wells at the site have been renewed for ten years to allow them to be used for injection of purge water from remediation operations.

The Vickery facility began operation in the late 1950s as a waste disposal facility. Waste was stored in in-ground pits until about 1976 when the first injection well was permitted. Three additional wells were in operation by the early 1980s. The injected wastes included liquid from the pits and acid and pickle liquor from plating operations. The acids caused corrosion of the steel injection tubing and well casing. This allowed movement of waste into a brine-bearing formation immediately above the injection zone. The wells were extensively repaired in the mid-1980s. The Ohio Environmental Protection Agency has no evidence that waste is moving upward from the Mt. Simon Sandstone. Contamination of near-surface aquifers is due to seepage from the old in-ground waste pits.

The requirements for design, construction, and monitoring of the two EDS wells preclude leakage caused by casing and tubing corrosion. The requirements for the design, construction, operation, and monitoring of the hazardous waste treatment and storage portion of the facility were developed to prevent the other types of problems associated with the Winona and Vickery facilities.

Additionally, concern was expressed regarding the relationship of the EDS facility and operations at the Sunoco Partners Marketing and Terminals, L.P. (SPMT), site in Romulus, particularly as it relates to SPMT's ability to construct and operate an extraction well at its site. The state and SPMT have jointly appealed to the Michigan Circuit Court the denial of SPMT's extraction well permit. Arguments regarding this matter were presented to the Michigan Court of Appeals at a hearing on September 13, 2005. A decision from the Michigan Court of Appeals is still pending. Under state law, the two operations can coexist.

The majority of the comments on the two deep wells pertain to issues raised in conjunction with the construction permitting process. Raising these issues in the context of the draft operating license is inappropriate and not timely. The construction permit has been subject to full judicial review and its validity upheld.

XI. LOCATION STANDARDS

1. *The location of the facility is not suitable given its proximity to Detroit Metropolitan Airport, schools, neighborhoods, and busy roads, and the potential to disrupt air or vehicular traffic. Why can't the facility be located in a more remote area? Transportation to a more remote area would add minimal costs to the method of disposal.*

Commercial hazardous waste management facilities are typically located near population centers where the waste is generated and near major transportation routes. While a more remote area may be a more suitable location from certain perspectives, it is not the MDEQ's role to select the site. The MDEQ's role is to ensure that, wherever a facility is proposed, the license application for the facility meets the requirements under the law.

As explained, the likelihood of a major release or accident at the EDS facility is remote, and the potential for it to impact transportation in the area is even more remote. During the construction permitting process, the SRB was not presented with any evidence that a spill, fire, or other emergency at the EDS facility would disrupt any off-site activity. The SRB was provided with detailed assessments and expert testimony that such events would not have significant off-site impacts. This included communication from airport executive Mr. Daniel O. Kerber indicating that, if the EDS project was approved and operations started, the EDS facility would not have an adverse effect on the operations at the airport. In the unlikely event that an accident or release at the facility presents a threat to persons or property off-site, the health and safety of all potential off-site receptors will be assessed, including motorists and any resulting disruption of traffic at the airport or on the highway would be temporary.

The additional costs associated with transportation to a more remote area are indeterminable as they are dependent upon the type of waste, volume of waste, type of transportation, method of subsequent management selected, and distance between the generator location and the storage, treatment, and disposal facility of choice.

2. *The facility should not be licensed because the area is subject to earthquakes which could impact the facility.*

As described in Section 10.10 of the license application, the area of the proposed facility is considered to be within a tectonically stable region, with no evidence of faulting. This satisfies the seismic location standard under R 299.9603.

XII. MDEQ REVIEW AND PUBLIC PARTICIPATION

1. *The MDEQ failed to provide adequate notice of the public hearing in the newspapers or on the radio.*

The MDEQ published notice of the public hearing in The Romulus News on May 20, 2005, and The Belleville/Romulus Journal on May 26, 2005. Notice of the public hearing was broadcast on WJR 760 AM radio at 7:10 a.m. on May 30, 2005. These notices satisfy the public hearing notice publication and broadcast requirements as specified in R 299.9513(1)(d). Additionally, notice of the public hearing was provided in the DEQ Calendar and through direct mailings to persons on the facility-specific mailing list maintained by the MDEQ.

2. *The MDEQ has gone well beyond the 140-day timeframe within which it is required to act on an operating license application pursuant to Section 11125(1) of Act 451.*

Subsection 11125(1) provides, in part, that the MDEQ shall make a final decision on an operating license application within 140 days after receiving a complete application. It further provides additional time beyond the 140-day limitation in order to fulfill the public participation requirements. A complete application was submitted on February 28, 2005, resulting in a 140-day deadline of approximately July 28, 2005. The public hearing on the draft license was held on June 30, 2005, with the public comment period ending on July 15, 2005. The MDEQ received a substantial number of public comments. It is critical that the MDEQ performs a complete review of the public comments received in order to provide a sound basis for a final decision on the license application. As such, the MDEQ utilized some additional time beyond the 140 days to satisfy its obligation to fulfill the public participation requirements, as provided for in statute.

3. *Based on the fact sheet for the draft license and other information, the MDEQ is prejudiced and has already provided permission to EDS to operate high pressure injection wells in Romulus.*

The draft license is for the aboveground hazardous waste treatment and storage portion of the facility only, not the operation of the injection wells. The MDEQ did not prejudge the proposal and has made it clear since the application was submitted that if the application met all of the technical requirements under the law, if there were no adverse listings in the disclosure statement, and if there were no adverse impacts on the local community that could not be mitigated, the operating license would be issued. These are the criteria established under Part 111, and the MDEQ has always been determined to comply with them.

The MDEQ is required by R 299.9511 and R 299.9512 to prepare a fact sheet as part of the public participation procedures associated with the draft license for the aboveground hazardous waste treatment and storage operations. The fact sheet is not an authorization to begin hazardous waste treatment and storage operations. Rather, it is a means to communicate relevant information as part of the formal public comment period. The draft operating license associated with the fact sheet is for the aboveground hazardous waste treatment and storage facility only. The construction and operation of the injection wells are governed by the federal UIC Program and other state laws and regulations outside of Part 111.

4. *The public was not provided with any of the criteria that the MDEQ uses to determine the adequacy of the license application.*

The criteria that the MDEQ used to evaluate the adequacy of the operating license application are specified in Part 111 and its administrative rules. The Notice of Receipt, fact sheet, Notice of Public Hearing, and direct mailings to the facility-specific mailing list are referenced in Part 111, the authority under which the license application was being submitted, reviewed, and subsequently processed. The public participation documents were drafted in accordance with the specified format and contained the required information, including references to Part 111, its administrative rules, and information concerning the availability of the application and the associated criteria. While it is not feasible to identify each individual criterion that the application must satisfy in these documents, nor is the MDEQ required to include such detailed information in these documents, this information is always available for review at the MDEQ offices.

XIII. OPERATING LICENSE

1. *The facility technical design, construction, and operating standards under Part 111 and its administrative rules are deficient in nature, and the application of these standards has failed citizens.*

In fulfilling its role of protecting human health, safety, welfare, and the environment, the MDEQ must ensure that a facility meets the stringent technical requirements that are developed at the federal level and further enhanced at the state level under Part 111. Both the federal and the MDEQ licensing programs start with the presumption that a facility will operate in compliance with its license. Margins of safety are built into the technical requirements governing hazardous waste management at treatment, storage, or disposal facilities. By considering the risks associated with various methods of hazardous waste management and developing technical requirements that account for such risks, the requirements are specific to the management method. The MDEQ is obligated to apply requirements within the bounds established by law. Denying a license or incorporating more stringent

conditions based on the possibility of noncompliance opens the door to arbitrary governmental decisions.

2. *The operating license application has not been changed fundamentally from past applications and is therefore deficient. Any changes made to the application have been "coached" by MDEQ employees interested in having the license approved.*

The current operating license application, which the MDEQ has determined meets the standards required by law absent receipt of any new relevant information, contains several changes, most importantly updated as-built construction engineering drawings and specifications and updated construction and capability certifications. The application also includes additional information that has changed since the construction permit was issued such as updated information on environmental permits (e.g., storm water discharge), an updated disclosure statement, and proof of financial capability for closure and liability coverage (i.e., surety bond and pollution legal liability insurance).

These changes and other less significant changes resulted from reviews and site inspections conducted by the MDEQ and from public comments. The MDEQ has a responsibility to all Michigan citizens, whether they represent local citizens, environmental groups, or those in the business sector, to ensure that a license application meets the standards required by law before reaching a final decision on the application. This responsibility includes providing an applicant with feedback on the application as well as consideration of relevant information, regardless of the source, in determining compliance with the required standards and preparing an operating license. The licensing of a hazardous waste treatment and storage facility is not a matter of desire of MDEQ staff. Rather, it is a matter of compliance with the requirements of the law.

3. *The MDEQ has used special operating license conditions to address public concerns over issues as a means of making the operating license fit the criteria. The MDEQ should not be considering issues such as traffic, construction permitting, and public safety itself as it does not have such powers. The MDEQ has gone beyond its authority.*

Under Subsection 324.11120(13) and R 299.9521, the SRB and/or the MDEQ have the authority to develop additional facility-specific construction permit and operating license conditions, respectively, to mitigate concerns and objections, achieve compliance with Part 111 and its administrative rules, or to protect human health and the environment. In order to develop the necessary facility-specific license conditions, the MDEQ has the ability to consider the construction permit requirements. The MDEQ has not overstepped its authority in preparing the facility-specific license conditions.

4. *Is the approximately 370,000 gallon storage value a daily storage value?*

The 370,000 gallons of hazardous waste value represents the facility's total storage design capacity. Thus, at any given time, no more than a total of 370,000 gallons of hazardous waste may be stored at the facility as a whole. The container storage area, the rail tanker car storage area, and the tanks storage area each have their own limited storage design capacities. If these limits are reached, no additional wastes may be put into storage until there is storage capacity available within the specified limitations. This can be accomplished by treating the wastes.

5. *Is there some means by which citizens of the area near EDS could find out what wastes can be accepted at the facility?*

Yes, a list of the specific hazardous waste codes, unique identification numbers established at both the federal and state levels, that could be accepted at the facility is in Attachment 7 of the draft license. As has been previously communicated by the MDEQ, this document is available for review at the Romulus Public Library, the local and Lansing MDEQ offices, and online via the MDEQ's Web site.

6. *Will the facility smell?*

The treatment and storage facility license does not authorize EDS to cause an odor nuisance in the community, and the emission controls at the facility should prevent an odor nuisance. All waste-handling activities are conducted inside the building where air emission controls are present. Persons who feel that the facility is creating an odor nuisance can work with the MDEQ, Air Quality Division, to resolve their complaint.

XIV. OTHER ENVIRONMENTAL PERMITS AND APPROVALS

1. *The MDEQ should not issue the license because EDS may not be able to maintain the variance from the federal land disposal restrictions for the injection of hazardous waste as required under Condition II.R of the draft license. A condition of the variance issued by the U.S. EPA on March 16, 2004, is that the exemption will terminate if SPMT's proposed extraction well is installed and operated within the area of influence of the EDS injection wells. The MDEQ issued a permit under Part 625 for SPMT to proceed with drilling the extraction well, and that permit is in litigation, currently at the Michigan Circuit Court of Appeals.*

The MDEQ cannot delay a final decision on the operating license solely because of the potential for EDS to lose the federal variance depending on the status of SPMT's extraction well. EDS has a valid federal variance at this

time, and the potential for EDS to lose that variance will always exist. That is why Condition II.R of the draft operating license requires EDS to have and maintain the federal variance. If the variance is lost at any time, EDS would be prohibited by the license from continuing to operate until a new exemption was obtained from the U.S. EPA.

When it issued the variance to EDS, the U.S. EPA acknowledged the possibility of the SPMT extraction well. While the U.S. EPA stated that the variance would terminate if the SPMT extraction well was installed and operated within the same formation that would be used by EDS for injecting hazardous waste, the U.S. EPA also left open the possibility for EDS to obtain another federal variance and the two operations to coexist. EDS could obtain another federal variance based upon a new No Migration Petition that included the extraction well.

2. *EDS has not received all other environmental permits necessary to operate.*

On September 6, 2005, the U.S. EPA, Environmental Appeals Board (EAB), ruled on the challenge to EDS's new UIC permits for the two deep wells in Romulus. The EAB issued an Order Denying Review, which has the effect of removing the stay on the two new UIC permits and the federal LDR variance. Thus, EDS now has all of the federal permits and Authorizations to Inject necessary to operate the two deep wells. The OGS issued its Authorization to Inject for the two deep wells on December 27, 2005. EDS also has the necessary National Pollutant Discharge Elimination System Permits, air permits, etc.

XV. POLLUTION PREVENTION

1. *The facility represents an inexpensive solution to other disposal options and a means for waste-producing companies to minimize adverse affects on profit margins, and does not promote waste minimization.*

The relative expense of sending waste to the EDS facility as opposed to some other type of facility is indeterminable as it depends on several factors, including: the type and volume of waste, means of transporting the waste, and alternate method of management selected. The MDEQ does not have the authority to consider the relative expense to generators using the EDS facility for their waste management needs as opposed to other facilities. The costs for using the EDS facility will be largely determined by what the waste management market will bear.

Regardless of the costs, hazardous waste generators are still required to demonstrate compliance with the waste minimization standards established by law. Licensing a facility to manage the wastewaters that are still generated by industry is not inconsistent with these requirements. The quantity of

hazardous waste generated and managed in Michigan has steadily declined, regardless of available treatment and disposal capacity in the state and region. The additional capacity offered by EDS is not expected to reverse that trend. Many factors, including the pursuit of greater efficiencies in manufacturing processes, the administrative and capital costs of managing hazardous wastes on-site, and the long-term liabilities associated with hazardous wastes, are influencing generators much more than the amount of commercially-available treatment and disposal capacity.

As far as EDS's waste minimization efforts are concerned, the facility does incorporate advanced sludge drying methods to reduce the volume of sludge generated from the treatment of the wastewaters, consistent with the pollution prevention goals.

XVI. PREPAREDNESS AND PREVENTION

1. *The communities in the area do not have the people or equipment necessary to be able to handle an accident should it occur at the facility or in route to the facility. What steps are taken to ensure public safety?*

The MDEQ does not expect any one community to be solely responsible for addressing all emergencies whether at the EDS facility itself or in route to the facility. EDS is primarily responsible for ensuring adequate resources are available to respond to potential emergencies at the facility. EDS will satisfy this requirement by maintaining its own portable fire extinguishing and spill response equipment and the personnel capable of using it, and by maintaining arrangements with local emergency response contractors pursuant to Condition II.H.1 of the license. Additionally, the Agreement, included in Attachment 13 of the license, requires EDS to offer hazardous materials emergency training to local police and fire departments. In the event of an emergency that requires off-site assistance, the MDEQ expects the city of Romulus to complement the resources that will be provided by EDS and its contractors and regional emergency response agencies. If a release or other emergency situation at the EDS facility were to threaten people or property offsite, then the police agencies with jurisdiction over the roads would be responsible for closing down the affected sections of those roads.

As explained above, the potential risks and safety issues associated with a hazardous waste storage and treatment facility are taken into account in establishing the design and operating requirements for such facilities under the federal and state HWMPs. Compliance with these requirements (e.g., waste analysis and subsequent management, preparedness and prevention, contingency plan, design standards, environmental monitoring, etc.) and the additional safeguards placed upon the facility (e.g., limitations on waste types, limitations on storage and treatment capacities, limitations on the method of waste delivery, designated truck routes, presence of an emergency

access/egress road, etc.) makes the risk of a release or other emergency at the facility minimal. From a fire safety perspective, the facility is designed to be fire resistant and it has automatic fire suppression systems.

XVII. PROPERTY RIGHTS

1. *Issuance of the license now will enable EDS to commence operations and to contaminate the subsurface strata prior to resolution of litigation involving SPMT's rights to use the same formation for brine extraction, forever obliterating SPMT's rights. The MDEQ must wait until the SPMT litigation is settled.*

The license under consideration is for the aboveground treatment and storage of hazardous waste; it does not regulate or authorize the use of the deep wells. While the operating license for the aboveground treatment and storage facility is needed before EDS can operate the deep wells, issuance of the license does not enable or ensure use of the deep wells. The deep wells are regulated separately by the U.S. EPA under the federal UIC Program and by the state under Part 625. The potential impacts of the operation of the deep wells are considered by the U.S. EPA when it decides whether to issue UIC permits, to grant variances from the federal LDRs for the underground injection of hazardous wastes, and to issue authorizations to use the deep wells. The MDEQ does not consider the impacts of the deep wells when deciding on a license for the aboveground storage and treatment facilities.

2. *Issuance of the operating license is tantamount to a "taking" by the state without just compensation because the hazardous waste that will be injected by EDS will migrate offsite in the subsurface strata, impinging on the subsurface property rights of adjacent property owners. The state has a duty to protect against known trespass to third party property.*

Issuance of the license cannot be considered a "taking" or "trespass" of adjacent property because the license covers only the aboveground treatment and storage of hazardous waste at the EDS site; it does not regulate or authorize the use of the deep wells or permit the off-site migration of hazardous waste aboveground or below ground. While the deep wells cannot be operated until the aboveground storage and treatment facilities are licensed under Part 111, EDS does not obtain its authority to use the deep wells from the license. EDS gains its authority to use the deep wells from the U.S. EPA under the federal UIC Program and from the state under Part 625. The potential impacts of the operation of the deep wells are considered by the U.S. EPA when it decides whether to issue UIC permits, to grant variances from the federal LDRs for the underground injection of hazardous wastes, and to issue authorizations to inject, and by the OGS under Part 625. The MDEQ does not consider the impacts of the deep wells when deciding on a license for the aboveground treatment and storage facility.

XVIII. PROPERTY VALUES

1. *The facility will adversely impact local property values.*

The MDEQ does not dispute the potential for the facility to adversely impact property values in the community, but it is not the MDEQ's responsibility to show whether the facility could adversely impact property values; it is the SRB's responsibility. The SRB chose to not hear the detailed testimony that was offered on the issue and chose to not deliberate it. The record contains only very limited oral and written testimony on the subject. The oral testimony is about a telephone survey of assessing authorities for "similar" facilities in other states. That survey apparently revealed that some of these facilities, or events that occurred at them, were assumed to have caused a reduction in residential property values or assessments. The written testimony includes articles on property value or assessment impacts in communities that host various types of facilities (e.g., planned low-level mixed-waste facilities, old landfills, etc.). The testimony did not compare the specific EDS proposal (i.e., enclosed facility with tanks and containers, fully contained run-off, environmental monitoring, etc.) to the other facilities mentioned; it did not explain why studies of other types of facilities in other states should be applicable to the EDS proposal; and it did not look at the real, or perceived, aspects of these other facilities (e.g., leaking lagoons, historical contamination, types of wastes managed, etc.) that may have caused the property value or assessment reduction.

Notwithstanding the lack of a clear demonstration of how property values might be impacted, the MDEQ is requiring EDS to honor its commitment to compensate all residents within a one and one-half mile radius of the facility for property value losses attributable to the facility, as described in the Agreement, Attachment 13 to the license.

XIX. SOCIAL AND ECONOMIC IMPACTS

1. *Romulus stands ready to grow and prosper by providing jobs through the racing industry, airport expansion, chemical operations, and other industries. However, the ability of Romulus to become a major economic hub in the future is being jeopardized by the MDEQ and the EDS facility.*

The MDEQ and SRB were not presented with any credible evidence that the treatment and storage facility would limit the community's economic future. The characterization of the facility as a nuisance and health risk to the community is not supported by any evidence.

XX. TRAFFIC

1. *Allowing 26 tanker trucks per day is excessive and will impede protective staging. The number of deliveries allowed per day should be reduced from the current 26, and deliveries should be forbidden during peak traffic hours.*

EDS committed in a February 29, 2000, letter to the SRB to limit the number of tanker trucks to 26 per day. There is no basis to further limit the type or number of deliveries per business day. Deliveries to the facility are limited to the facility's business hours, 6:00 a.m. to 10:00 p.m. Condition II.U.4 of the license stipulates that tanker trucks and other vehicles delivering hazardous wastes to the facility are prohibited from parking and staging off-site (e.g., on Citrin Drive). On-site staging is conducted in areas provided with secondary containment and limited in accordance with Condition II.U.3 of the license.

2. *The provision that specifies the route by which deliveries can be accepted at the EDS facility is not enforceable, and the ability of the MDEQ, Waste and Hazardous Materials Division Chief, to approve an alternate route without public comment is unacceptable.*

The main truck route was specified as part of the construction permitting process to mitigate community concerns and is preapproved as part of the license for the aboveground treatment and storage facility. Should the main route be blocked or otherwise not available, two options exist: (1) the trucks could take their shipment to the alternate facility designated on the manifest or (2) the truckers could contact EDS, which, in turn, would contact the MDEQ, Waste and Hazardous Materials Division (WHMD), to seek approval of an alternate route, as provided for in Condition II.U.2 of the license. The ability for the Chief of the WHMD to approve an alternate route is essential to maintain the flow of hazardous waste from generator to the treatment, storage, or disposal facility. The MDEQ will not be approving alternate truck routes as a common practice. Rather, the MDEQ envisions such approvals to be made in the event of unique circumstances that do not allow for usage of the preapproved truck route (e.g., vehicular accident, construction, etc.). The MDEQ would also consult with local officials in making such decisions.

If the MDEQ determines that EDS is accepting wastes from trucks that are not using the preapproved truck route or an MDEQ-approved alternative route, EDS would be in violation of the license, and the MDEQ could pursue appropriate enforcement action. Meanwhile, the trucks and the associated trucking businesses remain subject to applicable transportation laws and regulations outside of the MDEQ's jurisdiction, and the MDEQ would assist these other agencies as necessary.

3. *All vehicles delivering hazardous waste to EDS should be required to have a written truck route, filed in advance, with at least EDS and the Michigan State*

Police. The vehicles should also be equipped with global positioning satellite tracking systems that are at least in continuous communication with the trucking company, EDS, and the Michigan Department of State Police.

There is a designated truck route in the vicinity of the EDS facility as discussed above. Transportation routes used outside of the vicinity of the facility are not governed by Part 111. Transportation itineraries and the like are between the transportation firm and the truck driver and fall more under the authority of the U.S. Department of Transportation, the Michigan Department of Transportation (MDOT), and the Michigan Department of State Police (MDSP), Motor Carrier Division; not the MDEQ.

4. *Restrictions should be developed so that in case of an accident two materials that are potentially reactive are not in proximity of the EDS site at the same time.*

EDS can only control the scheduling of deliveries to its facility and has no way of identifying what other hazardous wastes, let alone hazardous materials and products, are on the roads at the same time. Conditions and procedures are provided for in the license to prohibit the storage or treatment of incompatible wastes together on-site. The MDEQ does not have the authority to limit the contents of other vehicles in the area under Part 111 and the license.

5. *Comparing trucking hazardous waste to EDS with the level of traffic increases for other types of operating vehicles is not appropriate and does not take into account the inherent risks and impacts.*

Based on the testimony and evidence provided to the SRB and obtained by the MDEQ from MDOT officials, the potential increase in traffic associated with the EDS facility, regardless of type, is negligible and will not, in and of itself, have an appreciable impact on the area roads or local traffic. The information does not show that tanker trucks are likely to be involved in accidents or that any accidents involving tanker trucks would have extreme, unacceptable consequences. The risks associated with tanker trucks are no greater than the risks that currently exist from other hazardous materials and products.

6. *The license application must take into account the conditions of the vehicles servicing the facility or leaks from hazardous waste containers.*

The license application considers the condition of vehicles and leaks from hazardous waste containers once on-site as required pursuant to Part 111. It does not consider such factors on an off-site basis as such regulation falls largely outside of the authority of the MDEQ. The Hazardous Materials Transportation Act, 1998 PA 138, establishes Michigan's Uniform State Hazardous Materials Transportation Registration and Permit Program that

regulates the transportation of certain hazardous materials. The motor carrier and vehicle inspection aspects of this program are administered by the MDSP.

7. *There is new research that has been printed in a lengthy series of articles by the New York Times on rail safety. The Inspector General's office of the Department of Transportation has issued a report on the condition of the railroads and rail service.*

EDS is required to comply with all applicable and currently effective laws and regulations governing rail transportation. The license only addresses issues regarding the rail tanker cars once on-site as Part 111 does not have jurisdiction with respect to railways.

The MDEQ monitors potential revisions to the laws and regulations governing hazardous waste management in order to incorporate them into the state HWMP, as appropriate. Additionally, the MDEQ provides input, as appropriate, on proposals outside of the HWMP that may have indirect impacts on the HWMP such as hazardous materials transportation, whether the transportation is by vehicle, tanker, or rail. However, the MDEQ cannot require compliance with proposals for hazardous waste transportation that have not been legislated or promulgated or that are outside of the direct authority of the MDEQ. Hazardous waste manifesting requirements are established under Part 111, and EDS is required to comply with them just as all other commercial hazardous waste management facilities in the state are required to comply. The fact that EDS has two injection wells as opposed to another means of disposal does not change the overall manifesting requirements.

XXI. WASTE ANALYSIS

1. *There is no system in place at the facility to ensure that the dioxins and dioxin-like compounds will be 100 percent secure.*

The EDS facility is not authorized to manage dioxin wastes.

XXII. ZONING AND LOCAL ORDINANCES

1. *The MDEQ has interfered with local government and its jurisdiction relative to certain permits and the adequacy of the construction of the facility based on the approved plan and specifications.*

Section 324.11121 of Part 111 provides that a local ordinance, permit requirement, or other requirement does not prohibit the construction of a hazardous waste treatment, storage, or disposal facility except in the case of a limited storage facility. The EDS facility is not a limited storage facility. The MDEQ has not interfered with local government and its jurisdiction relative to

the EDS facility. Where feasible, the MDEQ has worked with the local community and EDS through the construction permitting process to address these concerns and to mitigate them.

FACILITY-SPECIFIC CONDITIONS AND LICENSE CHANGES

In addition to the standard, or “boilerplate,” conditions typical of operating licenses, the operating license for EDS contains several facility-specific conditions. Many of these conditions are intended to mitigate the adverse effects identified by the SRB in its reasons for recommending denial of the construction permit. The following is a listing of all facility-specific conditions in the operating license. The conditions are listed in the order in which they first appear in the operating license. There have been no changes made to the license as a result of the June 30, 2005, public hearing and associated formal public comment period.

- **Preparedness and Prevention** Condition II.H.2 of the license requires EDS to install and maintain an alarm system that automatically notifies the city of Romulus in the event of an emergency that requires implementation of the contingency plan.

Condition II.H.3 of the license requires EDS to maintain fire hydrants at the facility in accordance with the city of Romulus requirements.

- **Water Supply** Condition II.H.4 of the license requires EDS to maintain a looped water supply to the site in accordance with the city of Romulus requirements for water at adequate volume and pressure.
- **Site Access** Condition II.H.5 of the license requires EDS to maintain an unobstructed alternate emergency access/egress road to the site. This addresses the concern that Citrin Drive would have been the only access road to the site, and that access from the north, south, and west is inhibited by the highway and other land uses.
- **Environmental Monitoring Data Availability** Condition II.L.4 of the license requires EDS to provide environmental monitoring information or data required pursuant to the license to an authorized representative of an environmental or emergency response department of the cities of Romulus or Taylor or Wayne County who requests such information and data and who has jurisdiction over the facility.
- **Reporting of Noncompliance** Condition II.L.6(b) of the license requires that EDS send copies of the follow-up reports regarding noncompliance that endangered human health or the environment to the city of Romulus, city of Taylor, and Wayne County.

- **Land Disposal Restrictions** Condition II.R of the license requires EDS to have and maintain an exemption from the land disposal restrictions for the injection wells pursuant to 40 CFR, Part 148, and comply with all conditions thereunder.
- **Truck Traffic** Condition II.U.1 of the license establishes daily limits on the number of tanker trucks that may deliver hazardous wastes to the EDS facility and provides that an increase in the maximum number of tanker trucks requires a major amendment to an operating license for the facility.
- **Truck Route** Condition II.U.2 of the license establishes the route that vehicles delivering hazardous waste to the facility may travel. The route from Interstate-94 includes Middlebelt Road, Wick Road, and Inkster Road.
- **Truck Staging** Condition II.U.3 and Condition II.U.4 of the license limit the number of trucks that may be staged on-site and prohibit the staging of trucks on Citrin Drive. This addresses the concerns regarding compliance with local ordinance parking limitations and the threat of a release on Citrin Drive, an off-site area that does not have spill controls and collection systems.
- **Mitigation** Condition II.V of the license incorporates the Agreement between EDS and the Environmental Concerns Association. The Agreement addresses many issues, including hours of operation, employment goals for local residents, hazardous materials training for local police and fire agencies, compensation for drops in property values, etc.
- **Hazardous Waste Processing** Condition II.W of the license requires EDS to process all hazardous waste to be disposed on-site through the storage and treatment facility and prohibits direct disposal.

Condition IV.C.3 of the license requires EDS to treat the hazardous waste to satisfy the injection limitations set forth in the federal UIC permits for the injection wells.

- **Injection Monitoring Program** Condition V.F of the license requires EDS to monitor the waste discharged into the injection wells and the operation of the injection wells in accordance with the program specified in the federal UIC permits for the wells.

ADDENDUM TO RESPONSIVENESS SUMMARY

Response to Additional Comments from Sun Partners Marketing & Terminals, L.P., Based on U.S. Environmental Protection Agency, Environmental Appeals Board's Order Denying Review for Underground Injection Control Appeal Numbers 04-01 and 04-02

Introduction

The MDEQ received additional comments from SPMT after the close of the formal public comment period on the EDS draft hazardous waste management facility operating license. The following is a chronology of pertinent events related to the submittal of SPMT's comments:

- June 1 to July 15, 2005: The formal public comment period for the license for the proposed aboveground hazardous waste treatment and storage operations at EDS is open.
- June 30, 2005: The MDEQ conducts a public hearing on the draft operating license.
- September 6, 2005: The EAB issues an Order Denying Review for UIC Program Appeal Numbers 04-01 and 04-02.
- October 3, 2005: The MDEQ receives additional comments on the operating license via e-mail from SPMT through its legal counsel. The comments are submitted for consideration given the EAB's September 6, 2005, decision. The MDEQ is electing to respond to those comments in this Addendum in order to make it easier for the public to obtain and review a synopsis of SPMT's comments and the MDEQ's response.

Comments

The comments allege that EDS unlawfully constructed the two injection wells as it did not have hazardous waste authorization at that time. Lacking such authorization, SPMT suggests that there was not sufficient regulatory oversight during construction to ensure that the wells were designed properly and in a manner that was protective of human health and the environment. SPMT also questions EDS's ability to operate the injection wells. Assuming that all of these statements are in fact true, SPMT contends that the MDEQ must deny the operating license under Part 111 or, at the very least, reconvene the SRB and

reopen the public comment period so that the public can comment on the injection wells.

Responses

The MDEQ, the agency authorized by the U.S. EPA to administer the state HWMP in lieu of the federal HWMP under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), consulted with staff of the Michigan Department of Attorney General and the U.S. EPA regarding the issues raised by SPMT. Based on that input, Part 111, and Part 625, the MDEQ offers the following in response to the issues raised by SPMT:

RCRA Permit Prior to Well Construction and Legality of Construction

Rule 299.9503(3) provides for a “permit by rule” for hazardous waste injection wells under certain conditions. If the requirements of R 299.9503(3)(a) are satisfied, the owner and operator of a hazardous waste injection well “shall be deemed to have an operating license and shall not be subject to the construction permit requirements of part 111 of the act and these rules.”

EDS meets all of the applicable requirements of R 299.9503(3)(a). EDS obtained, and has complied with, the UIC permits issued by the U.S. EPA under the federal Safe Drinking Water Act, thereby satisfying the requirements of R 299.9503(3)(a)(i) and (ii). The only other potentially relevant requirement in R 299.9503(3)(a) is that the owner and operator “complies with ...[t]he provisions of R 299.9629, Corrective action.” Under the corrective action rule, the obligation to perform corrective action arises if there are any “releases of a contaminant from any waste management units at the facility.”

To date, EDS has not accepted or managed any waste at the Citrin Drive facility. The MDEQ inspections have not identified, nor has MDEQ staff otherwise obtained, evidence of any releases of a contaminant from any waste management unit at the site. Thus, EDS has no current corrective action obligation to perform.

It is important to note, however, that as stated in the Part 111 construction permit for EDS’s aboveground facility and in the draft Part 111 operating license for that facility publicly noticed by the MDEQ, when and if a Part 111 operating license for the facility is issued, it will contain specific provisions, consistent with both the RCRA and Part 111, requiring EDS to implement corrective action for any releases of a contaminant from all waste management units at the facility.

In summary, EDS satisfies the requirements for a “permit by rule” under R 299.9503(3) and was, therefore, not required to obtain a Part 111 construction permit for the injection wells construction at its Citrin Drive facility.

Additionally, in March 1999 EDS obtained the necessary permits to construct the wells under Part 625. Since all of the necessary federal and state permits to construct the wells were obtained prior to the actual initiation of construction of the wells, the wells were constructed legally.

Well Construction and Subsequent Testing and Oversight

Staff from either the OGS or the U.S. EPA, Region 5, was on-site during the drilling of the injection wells and also during the subsequent testing to ensure that the wells were properly constructed in accordance with the UIC and Part 625 construction requirements and that the wells would be able to safely accept the injected wastes. The construction requirements included in both sets of permits addressed, in part, requirements for specifications for hole diameters, casing sizes and depths, and cementing of casings that were, and are, collectively designed to prevent damage to potable water, mineralized water, or other subsurface resources. Compliance with these requirements is demonstrated through records in the OGS's files. It warrants mentioning that Part 625 provides far broader protections than the federal UIC Program, which focuses on the protection of underground sources of drinking water.

SRB and Public Participation Opportunities

Under Subsection 11120(16), the MDEQ may reconvene the SRB for a given Part 111 construction permit to consider new issues raised during the public comment period on that permit. The public comment period on EDS's construction permit began on December 15, 2000, and ended on February 1, 2001. That public comment period did not generate any new issues related to the aboveground hazardous waste treatment and storage operations at the facility that would warrant reconvening the SRB. The MDEQ's issuance of the construction permit was affirmed by Michigan courts, and the MDEQ is not aware of any new information that would be cause to reconsider the construction permit at this time.

The public has been afforded many opportunities to comment on the construction of the injection wells and the aboveground hazardous waste treatment and storage operations at the facility through the various public participation processes associated with the Part 625 construction and operating permit process, the UIC construction and operating permit process, and the Part 111 construction permit and operating license processes, respectively. The MDEQ believes that those opportunities for public comment were not only necessary but were sufficient to raise issues warranting consideration. The thorough review of all pertinent comments is integral to supporting the respective regulatory decisions.

Summary

The MDEQ has been delegated authority by the U.S. EPA to administer the state HWMP in lieu of the federal HWMP under the RCRA. By satisfying the conditions for a "permit by rule" under Part 111, EDS obtained all of the necessary permits and authorizations to construct the two underground injection wells as required by the authorized Program. Additionally, EDS obtained the necessary UIC and Part 625 permits to construct and operate the wells. The MDEQ believes that the wells were constructed in accordance with the applicable portions of the UIC Program, RCRA Program, Part 111 Program, and Part 625 Program.

As for public involvement, the MDEQ believes that the opportunities for public comment for the aboveground and belowground operations at the facility have been not only necessary but sufficient to support technically sound and defensible regulatory decisions.